

most appropriate.³⁹ It must be in a newspaper of general circulation in the area of intended employment most appropriate to the occupation and the workers likely to apply for the job opportunity and most likely to bring responses from able, willing, qualified, and available U.S. workers. The wage offered for the position may not be lower than the prevailing wage determination made by the U.S. Department of Labor for the job.⁴⁰

If there is a bargaining representative for the employees or occupation, then the employer must provide notice to the bargaining representative of the employer's employees in the occupational classification and areas for which the aliens are sought.⁴¹ The job requirements set forth in the labor certification must be the actual minimum requirements necessary to perform the job satisfactorily. An employer cannot add requirements to discourage US workers that is not the real minimum requirements for the job.⁴² The job cannot be tailored to the alien. The job requirements must be normal for the occupation and should not exceed the Specific Vocational Preparation ("SVP") level assigned to the occupation by the O Net job zones unless justified by an actual business necessity.⁴³ If a labor certification is granted an immigrant visa petition (I-140 petition) must be filed with USCIS within 180 days otherwise the Labor Certification is invalidated.⁴⁴ In cases that require a Labor Certification the I-140 petition must establish that the employer had the ability to pay the certified wage as of the date the Labor Certification was filed and that the alien had the education and/or work experience that was required in the Labor Certification.⁴⁵

In light of the extensive process that is required for skilled workers, professionals, and other workers, whether Danilo Bracho, who is currently a student, could ever take advantage of this category of immigration is speculative.

- **Special Immigrants**

The next employment based immigrant visa category is primarily set aside for certain special immigrants. The special immigrants that can qualify are ministers of religion; professionals in a religious vocational occupation or as a religious worker.⁴⁶ I have not seen anything that would suggest that Danilo Bracho qualifies as a special immigrant and whether he might ever qualify as such an immigrant is speculative.

- **Immigrant Investors**

The final employment based immigrant visa category is set aside for immigrant investors. To qualify for immigration as an immigrant investor is a highly complex and restrictive visa category. In order to qualify for immigration as an investor the individual must establish that they have invested or are actively in the process of investing capital in a new commercial

³⁹ 20 C.F.R. § 656.17(e)(1)(i)(B)(I).

⁴⁰ 20 C.F.R. § 656.17(f)(5).

⁴¹ 56 Fed. Reg. 54920, 54924 (Oct. 23, 1991).

⁴² 20 C.F.R. § 656.17(i).

⁴³ 20 C.F.R. § 656.17(h).

⁴⁴ 20 C.F.R. § 656.30(b).

⁴⁵ 20 C.F.R. § 656.10(c)(3)&(4).

⁴⁶ INA § 203(b)(4); 8 U.S.C. § 1153(b)(4). See also INA § 101(a)(27)(C).

enterprise, which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence, or other immigrants lawfully authorized to be employed in the United States.⁴⁷ The amount of capital that is required to be invested is \$1,000,000, except that amount can be reduced to \$500,000 if the investment is made in a targeted employment area.⁴⁸ I have not seen any evidence that Danilo Bracho satisfies these requirements and whether he may in the future is speculative.

There are additional requirements for an individual who qualifies as an immigrant investor to be granted full permanent residence.⁴⁹

- **Diversity Immigration**⁵⁰

The diversity Immigrant visa program is a lottery which can allow the maximum of 50,000 individuals to immigrate to the U.S. In order to be eligible an applicant must be a native of a designated low admissions state.⁵¹ Europe is considered a low admission region and Portugal is considered a low admission state. The maximum number of individuals who can immigrate from a low admission state is determined by a complex formula based on the number of persons from each foreign state who were provided lawful permanent residence status during the most recent 5 year period for which data is available.⁵²

For Portugal that number was extremely low. Therefore, for the last diversity program that covered the 2018 fiscal year, covering the period from October 1, 2017 to September 30, 2018, only 84 people from Portugal were registered.⁵³

For the 2018 Diversity Immigrant Visa (“DV”) Lottery Program 50,000 applicants were selected at random from 14,692,258 qualified entries. To qualify for the lottery the individual

⁴⁷ INA § 203(b)(5)(A)(i) & (ii); 8 U.S.C. § 1153(b)(5)(A)(i) & (ii).

⁴⁸ INA § 203(b)(5)(C)(i)&(ii). Targeted employment areas are defined as high unemployment areas or rural areas. A high unemployment area is an area which has experienced high unemployment of at least 150 percent of the national average. A rural area means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more. INA § 203(b)(5) B&(C). There is also a possibility of qualifying as an immigrant investor through indirect job creation by investing in a regional center. 8 C.F.R. § 204.6(J). For an individual investment not in a regional center there must be a comprehensive business plan. 8 C.F.R. § 204.6(J)(4)(i)(B). The source of the funds must be owned by the investor and the individual must establish that the funds were acquired directly or indirectly by lawful means. 8 C.F.R. § 204.6(e)(J). The assets to be invested must be totally at risk. 8 C.F.R. § 204.6(j)(2). It must be established that the 10 permanent jobs will be created within two years. 8 C.F.R. § 204.6(J)(4)(i)(b). The permanent residence that is granted in investor cases is a conditional permanent residence. Within 90 days prior to the 2nd anniversary the individual must apply for removal of conditional residence.

⁴⁹ Under 8 C.F.R. § 216.6(c)(i)(iv), the individual must establish the following in order for the conditional residence to be removed and for the individual to be granted full permanent residence: (a) The CR invested or was actively investing the required capital and it was sustained throughout the two year period of conditional residence; (b) The enterprise was sustained and the individual substantially met the capital investment requirements of the statute; (c) The individual created the 10 full time jobs or it can be expected to create the 10 full time jobs for qualifying employees within a reasonable time.

⁵⁰ INA § 203(c), 8 U.S.C. § 1153(c).

⁵¹ 22 C.F.R. § 42.33(a)(1).

⁵² INA § 203(c)(1).

⁵³ See Exhibit K, DV 2018 Selected Entrance at 3.